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14 **UNITED STATES BANKRUPTCY COURT**

15 **DISTRICT OF NEVADA**

16 In re

17 ELKO GOLD MINE, LLC,

18 Debtor.

19 Case No. BK-N-11-50084-BTB

20 Chapter 11

21 **TEAM GREEN INC.'S MOTION TO  
22 ESTIMATE CLAIM FOR PURPOSES OF  
23 VOTING ON AND CONSIDERATION OF  
24 OBJECTION TO CONFIRMATION OF  
25 DEBTOR'S SECOND AMENDED  
26 CHAPTER 11 PLAN OF  
27 REORGANIZATION**

28 Hearing Date: OST Pending

Hearing Time: OST Pending

21  
22 Team Green, Inc. ("TGI"), by and through counsel, Gregory D. Corn, Chartered and Law  
23 Offices of Amy N. Tirre, A Professional Corporation, hereby moves pursuant to Federal Rule of  
24 Bankruptcy Procedure ("FRBP") 3018(a) for an order estimating its claim for purposes of voting  
25 on and objecting to Elko Gold Mine LLC's ("Debtor") Second Amended Plan of Reorganization  
26 and in support respectively states:  
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- 28 1. On January 10, 2011, Debtor Elko Gold Mine, LLC filed its voluntary petition for

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1 relief under Chapter 11 of Title 11 of the United States Code.

2       2. The bar date for timely filing proofs of claim was May 16, 2011.

3       3. Debtor's originally-filed Schedule F identified TGI as an unsecured creditor with  
4 a claim in the amount of \$101,956.02. The Debtor did not indicate the debt was disputed,  
5 contingent or unliquidated. See Docket No. 1 filed on January 10, 2011.

6       4. Under FRBP 3003, creditors are not required to file a proof of claim in a Chapter  
7 11 case if the schedule of liabilities identifies the claim unless it is scheduled as disputed,  
8 contingent or unliquidated. Otherwise, the schedules constitute prima facie evidence of the  
9 validity and amount of the claim.

10      5. Debtor filed Amended Schedules on April 11, 2011 as Docket No. 83.

11      6. In Debtor's Amended Schedule F, Debtor marked TGI's claim as disputed.

12      7. Pursuant to FRBP 1009(a), an amendment to the schedules must be served upon  
13 all parties affected by the amendment.

14      8. A review of the docket reveals no proof of service of the Amended Schedules  
15 upon either TGI or its counsel, Gregory D. Corn, Esq. Based upon undersigned counsel's  
16 information and belief, neither TGI nor its counsel, Mr. Corn, were served with the Amended  
17 Schedule F and Mr. Corn was unaware of the change in status of TGI's claim until this week.

18      9. Concurrent with the filing of this motion, TGI is filing its proof of claim in the  
19 amount of \$105,071.33.

20      10. Because Debtor has categorized TGI's claim as disputed and TGI was unaware of  
21 this change to the status of its claim, TGI's vote on Debtor's plan will not be counted unless this  
22 court estimates its claim for voting purposes pursuant to FRBP 3018. *See* FRBP 3003(c)(2). "A  
23 claimant whose claim has been objected to has an affirmative duty to request the claim's  
24 estimation if the claim holder wishes to vote on the plan." *See In re M. Long Arabians*, 103 B.R.  
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26  
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1 211, 215 (9<sup>th</sup> Cir. BAP 1989).

2 Based upon the foregoing, TGI respectfully requests the Court to estimate its claim in the  
3 amount of \$105,071.33 for voting purposes so that its claim will be considered with respect to  
4 confirmation of Debtor's Second Amended Plan and so that TGI's objection to Debtor's Second  
5 Amended Plan will also be considered by this court.

6 DATED this October 13, 2011.

7 GREGORY D. CORN, CHARTERED

8 and

9 LAW OFFICES OF AMY N. TIRRE, APC

11 By: /s/ Amy N. Tirre  
12 AMY N. TIRRE, ESQ.

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13 *Counsel for Team Green, Inc.*

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## **CERTIFICATE OF SERVICE**

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on October 13, 2011 I filed the **TEAM GREEN INC.'S MOTION TO ESTIMATE CLAIMS FOR PURPOSES OF VOTING ON AND CONSIDERATION OF OBJECTIONS TO CONFIRMATION OF DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION** as indicated:

X **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

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**BY MAIL:** by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on 13 October 2011, with postage thereon fully prepaid in the ordinary course of business.

DATED this October 13, 2011.

/s/ Andrea Black